OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 19, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions:

I write you today about two of your policies that serve to destroy the dignity of individuals and families seeking asylum in our country. The first is your policy to rip children from asylees as federal authorities detain them; the second is your policy to categorically deny asylum applications from those who have suffered domestic violence and other horrors you have deemed "private criminal activity." These policies show complete disdain for women and children, and I ask you today to immediately withdraw and stop enforcement of both policies.

1. **Decision to Separate Families at the U.S. Border**

First, your Department and its coordinating agencies have begun a barbaric and unforgiving practice of separation of children from their families at our country's borders. This policy has extended beyond those being prosecuted for illegal entry to families seeking to apply lawfully for asylum. Our country is watching as federal immigration agents, acting in accordance with your "zero tolerance" policy toward immigrants, tell detained parents that their children, including those as young as toddlers, are being bathed in another room, when in reality they have been transported sometimes thousands of miles away. Federal authorities are preventing parents and children from communicating with each other for weeks and months at a time. The children are kept behind chain-link fences in detention centers. Make no mistake: beyond the obvious fact that your policy violates the universal legal principle of acting in the best interests of children, your policy has terrorized these families, created widespread misery, and risks destroying their lives forever. It must end immediately. I call on you to cease the separation of families as they attempt to enter our country.

In addition to lacking any moral foundation, your actions have no legal basis. Your Department has taken the position, along with members of President Trump's administration and

supporters in Congress, that these separations are required by federal law. Yet, Congress has passed no law requiring you to separate families. It is your policy decision alone that has brought us to this shameful point.

You have shamefully accused parents who bring their children to this country in search of a better life of "smuggling a child." In support of your position and in an effort to urge immigrants "to obey the laws of the government," you have cited a Bible passage that was also once used to justify slavery. Numerous religious leaders have rightly criticized you for taking that passage out of context and for using scripture to justify an inhumane and unjust policy.

You announced your "zero-tolerance policy" for immigrants in April. Yet as far back as 2005, Congress has cautioned the Department of Homeland Security against separating immigrant families. It stated that "[c]hildren who are apprehended by DHS while in the company of their parents are not in fact 'unaccompanied;' and if their welfare is not at issue, they should not be placed in ORR [Office of Refugee Resettlement] custody."[1] Your policy of separating families after their physical entry to the United States violates that directive. Your "zero-tolerance policy" on immigration has led to widespread criminal prosecutions of individuals suspected of committing the misdemeanor of illegal entry, but also detention of those who lawfully apply for asylum at the border. In both cases, ICE agents are taking children away from their detained parents, sometimes through unimaginably deceitful means, and sending them to facilities that can be thousands of miles away. As you are no doubt aware, a federal court has already found that a lawsuit seeking to stop these practices sufficiently alleges facts that shock the conscience and violate the right to family integrity.[2]

As justification for these practices, your Department has cited a federal law that deems a child an "unaccompanied alien" if the child is under 18, not here lawfully, and has no parent or legal guardian in this country available to provide care and physical custody, along with another law that says those unaccompanied children shall be sent to the Department of Health and Human Services.[3] It is your own policy and actions that have rendered these children "unaccompanied." The children you are tearing from their families did not arrive in this country alone. You are arresting their parents and detaining lawful asylum applicants in vast numbers. And nothing about your detention of immigrant parents renders them unavailable to provide care for and physical custody of their children except for where this administration has chosen to house them. As you know, the federal government has facilities designed for housing entire families. It is also capable of enacting policies that are humane and just. Your policy is the opposite. You have twisted the law to create the outcome you desire, and it must end now.

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[1] H.R. Rep. No. 109-79, at 38 (2005), *available at* https://bit.ly/2tfaAI9.

[2] *Ms. L. v. U.S. Immigration & Customs Enf.*, No. 3:18-cv-428, 2018 WL 2725736, at *12 (S.D. Cal. June 6, 2018) ("These allegations call sharply into question the separations of Plaintiffs from their minor children. This is especially so because Plaintiffs allegedly came to the United States seeking shelter from persecution in their home countries, and are seeking asylum here. For Plaintiffs, the government actors responsible for the 'care and custody' of migrant children have, in fact, become their persecutors. This is even more problematic given Plaintiffs' allegations and assertions that there is a government practice, and possibly a forthcoming policy, to separate parents from their minor children in an effort to deter others from coming to the United States.").

[3] *See* 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(b)(3).

2. Termination of Asylum Status for Victims of Domestic Violence and Gang Violence

Your decision to reverse existing legal interpretation and end the possibility of asylum for individuals persecuted through domestic violence or gang violence is another example of using the law to achieve cruel and unjustified results. The Immigration and Nationality Act allows any person who is physically present in or arrives in the United States to apply for asylum.[4] It is the burden of the applicant to prove that she is a refugee, meaning that she is unable or unwilling to return to her home country because of persecution, or a well-founded fear of persecution, due to her race, religion, nationality, political opinion or membership in a particular social group.[5] As in all areas of the law where interpretation and flexibility are required, the determination of whether an individual has suffered persecution as a member of a particular social group has been interpreted to further justice.

With your recent action to terminate asylum status for victims of domestic violence and gang violence, you have used this flexibility to turn a blind eye to persecution. Since 2014, it has been the policy of the United States to grant refugee status to victims of domestic violence. In *Matter of A-R-C-G- et. al*, 26 I&N Dec. 388, 388 (BIA 2014), the Board of Immigration Appeals ruled that "married women in Guatemala who are unable to leave their relationship can constitute a cognizable particular social group that forms the basis of a claim for asylum or withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act." In explaining its decision, the Board noted that this particular social group "is composed of members who share the common immutable characteristic of gender," and that "marital status can be an immutable characteristic where the individual is unable to leave the relationship."[6] This well-reasoned decision recognizes that domestic violence can rise to the level of past persecution warranting the grant of asylum. [7]

On June 11, 2018, you personally overruled that policy,[8] apparently uninterested in the heightened abuse that women and children can face in countries where their suffering is ignored. Your opinion dismisses domestic violence as "private criminal activity" and a "purely personal matter." This is a depraved characterization of domestic violence without any empathy for victims of a crime that is often rooted in cultural norms and acceptance of abuse towards women. Your new policy requires an asylum applicant to "show that flight from her country is necessary because her home government is unwilling or unable to protect her,"[9] setting a cruel precedent that ignores a sad reality for many refugees. The effect of your ruling is that individuals persecuted by non-state actors are precluded from obtaining asylum unless they can show the government sponsored or enabled the persecution.[10] This is an unprecedented shift. As your ruling acknowledges, "[g]enerally, claims by aliens pertaining to domestic violence or gang

[4] Section 208(a)(1).
[5] Section 208(b)(1), Section 101(a)15P.
[6] *Matter of A-R-C-G- et. al,* 26 I&N Dec. 388, 392-93 (BIA 2014) (decided Aug. 26, 2014).
[7] *Id.* at 390.
[8] *Matter of A-B-, Respondent*, 27 I&N Dec. 316 (A.G. 2018) (decided June 11, 2018).
[9] Id. at 317.
[10] *Id.* at 318.

violence perpetrated by non-governmental actors will not qualify for asylum."[11] You have discounted the persecution that is domestic violence as merely "victim[s] of a particular abuser in highly individualized circumstances"[12] – a decision that is both inhumane and ignorant of the realities of life in the applicants' home countries.

Lastly, you have included in your decision a directive to immigration judges that can only be described as biased and cruel. While acknowledging that granting asylum involves some level of discretion, you "remind all asylum adjudicators that a favorable exercise of discretion is a discrete requirement for the granting of asylum and should not be presumed or glossed over solely because an applicant otherwise meets the burden of proof for asylum eligibility under the INA."[13] In other words, you have instructed decisionmakers that, even if an applicant has met the burden required by law, they still should consider denying a request for asylum. Not only is this contrary to the application of law, but it is contrary to the ideals of justice that favor the use of discretion to grant relief, not take it away. I urge you to rescind your ruling regarding applications for asylum and to instead continue the prior policy of granting refugee status to those who can demonstrate they were persecuted as victims of domestic violence.

Any disruption of longstanding precedents that govern the entry of individuals into the United States must be rooted in empathy, justice, and compassion. Your recent decisions run counter to each of these foundational American ideals. I urge you to reconsider these policy changes.

Sincerely,

Lisa Madigan

Lisa Madigan
Attorney General of Illinois

cc: The Honorable Kirstjen Nielsen, Secretary of the U.S. Department of Homeland Security

Illinois Congressional Delegation

[11] *Id.* at 320.
[12] *Id.* at 336 n. 9.
[13] *Id.* at 345 n. 12.